IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4934 of 2007()

LPC.80/2004 of ADDL.C.J.M.,THALASSERY
CRIME NO.185/03 OF PANUR POLICE STATION

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: PETITIONER/ACCUSED NO.4

NIZAR.K.,
S/O.K.K.KADER, AGED 28 YEARS, PARIMALAM (PO),
CHEMPAD, KANNUR DISTRICT.

BY ADV. SRI.T.K.SAIDALIKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
PANUR POLICE STATION.

2. THE STATE REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No. 4934 of 2007

Dated this the 14th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Section 498 A I.P.C. He is arrayed as an accused now. All the co-accused who faced trial have already been found guilty, convicted and sentenced except one accused. As the petitioner was not available for trial, the case against him was split up. Coercive processes issued by the learned Magistrate are chasing the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful or intentional. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But the petitioner apprehends that the learned Magistrate may not consider his application for regular bail on merits, in accordance with law and expeditiously. It these circumstances, it is prayed that anticipatory bail may be granted to the petitioner.

3. The application is opposed by the learned Public Prosecutor . After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory

reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

4. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed. But with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-